

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF DELAWARE

HONEYWELL INTERNATIONAL, INC.
et al.

CIVIL ACTION

Plaintiffs,

v.

APPLE COMPUTER, INC., et al.,

Defendants.

NO. 04-1338 (MPT)

Wilmington, Delaware
Wednesday, November 21, 2007 at 11:47 a.m.
TELEPHONE CONFERENCE

BEFORE: HONORABLE MARY PAT THYNGE, U.S. MAGISTRATE JUDGE

APPEARANCES:

MORRIS NICHOLS ARSHT & TUNNELL, LLP
BY: THOMAS C. GRIMM, ESQ.

and

ROBINS KAPLAN MILLER & CIRESI, L.L.P.
BY: MATTHEW L. WOODS, ESQ.,
STACIE E. OBERTS, ESQ., and
PETER SURDO, ESQ.
(Minneapolis, Minnesota)

and

ROBINS KAPLAN MILLER & CIRESI, L.L.P.
BY: ANTHONY FROIO, ESQ.
(Boston, Massachusetts)

Counsel on behalf of Honeywell
International, Inc., and Honeywell
Intellectual Properties, Inc.

Brian P. Gaffigan
Registered Merit Reporter

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1 are potential infringers, all of which are detailed in the
2 provisions I referenced earlier.

3 The better cases, judge, from this particular
4 court, your court, is the Constar case where it specifically
5 states that a community of legal interests may arise between
6 parties jointly developing patents. They have a common
7 legal interest in developing the patents to obtain greatest
8 protection and in exploiting the patents.

9 And that is exactly what the 2003 agreement
10 states and contemplates between Honeywell and LPL. So
11 it's an untrue statement, to say, judge, as referenced in
12 Samsung's brief, that only when you have an exclusive
13 licensee and only when there is a duty to defend does this
14 common interest lie. That is just not correct.

15 MR. KORNICZKY: Steve Korniczky, Your Honor.
16 We're being whipsawed here. Number one, the only interest
17 here --

18 THE COURT: Well, let me put it this way. I
19 was reading through my opinion, quite frankly, in the
20 Block Drug case and also the Corning, Incorporated case by
21 Judge Farnan in 2004. My opinion, by the way, came down in
22 April of 2007. And in reading through what it is, I'm not
23 fully comfortable that this is necessarily a joint defense
24 type argument, fully comfortable, because I don't see proof
25 that establishes that at the time of the negotiations, LPL

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1 and Honeywell shared common identical legal interests in
2 this. There, to me, is really negotiations between two
3 corporations to enter into a licensing arrangement in which
4 LPL ended up with a financial gain. But I also don't agree
5 with paragraph three necessarily, that is, what defendants
6 want to say to their client. And it would be only to, it
7 is my understanding, the level that is in-house counsel and
8 in-house counsel in these companies could not disclose it to
9 anyone else; is that correct?

10 MR. KORNICZKY: That's correct, Your Honor.

11 THE COURT: So paragraph one will be allowed,
12 paragraph two will be allowed. And this is at page two.

13 Paragraph four will be allowed because it says,
14 share the costs, licensing and defense of the patent as well
15 as the proceeds from enforcement and licensing efforts
16 overall. These are just statements you are going to be
17 allowed to say, nothing beyond that.

18 MR. KORNICZKY: Understood, Your Honor.

19 MR. OLLIS: Your Honor, might I request that
20 with respect to paragraph three, we be permitted to say
21 that there is a dispute as to Weather?

22 THE COURT: No. No, you are not. No, paragraph
23 three is just going to be out entirely. Once you start
24 telling them that Honeywell and LPL have a license, it's a
25 nonexclusive license and LPL shares in the cost of

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1 enforcement, that is going to be enough to tell your
2 in-house counsel at the respective companies what is going
3 on. So one, two and four will be allowed.

4 I'm trying to figure out what you are trying to
5 get at at paragraph five.

6 MR. KORNICZKY: Let me just read that through
7 one more time, Your Honor. Hang on one second, please.

8 Basically, number five would confirm that they
9 basically did what's stated there. They have shared in the
10 costs, for example.

11 MR. FROIO: Well, Your Honor, it directly
12 reflects back to paragraph number three.

13 THE COURT: I understand that. I understand
14 that. But to the extent that it adhered to the terms of the
15 agreement reflected in four, I'm just trying to figure
16 out --

17 MR. KORNICZKY: What does it add?

18 THE COURT: Yes, what does it add? That is my
19 whole problem.

20 MR. FROIO: It doesn't add anything, Your Honor,
21 and again it goes back to the fundamental argument about
22 what is their basis for this.

23 THE COURT: Yes. And so it's one, two and four,
24 they're going to be allowed to share. Okay?

25 MR. KORNICZKY: Thank you, Your Honor.

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1 MR. OLLIS: Your Honor, this is Andy Ollis from
2 Optrex. If I could make one point of clarification with
3 respect to who the in-house counsel are at Optrex. For
4 example, there are no U.S. attorneys that are in-house
5 counsel but there are folks in the Legal Department and IP
6 Department, a select group of two or three individuals who
7 are in comparable positions. And I wanted to confirm that
8 that was --

9 THE COURT: Are those individuals that were
10 identified in some way under the protective order? Because
11 it's my understanding, it sounds to me like there is a
12 two tier protective order in this case, I can't recall,
13 confidential and highly confidential.

14 MR. ROSENTHAL: Your Honor, this is Larry
15 Rosenthal. There is the three tier and the middle tier
16 defines in-house counsel to include more than just lawyers
17 on both sides. I don't have it in front of me but I know
18 there is a definition that would extend to non-lawyers at
19 Fuji, also a very limited number, a very limited number of
20 non-lawyers at Honeywell.

21 THE COURT: Okay.

22 MR. FROIO: You know, Your Honor, that
23 certainly would not be acceptable, and I don't think that
24 is fair under any stretch of the imagination. I mean this
25 particular issue has been tied to potentially a patent

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misuse claim. There is absolutely no reason whatsoever that even this information that Your Honor has allowed to be disclosed needs to be any further than in-house counsel. It's highly, highly prejudicial to Honeywell.

THE COURT: Well, I don't know how highly, highly prejudicial it is, quite frankly, but the request, the way I read it, was seeking to only disclose it to a limited set of in-house counsel.

MR. FROIO: That was subject to the protective order, right.

THE COURT: And that is what was essentially asked for. And what SDI indicated in its letter that it was seeking that Honeywell said no to, and I'm going back to that, it's your paragraph at page two, the second to the last paragraph: Samsung SDI justified this request by stating that those facts could potentially form the basis of a patent misuse claim. Further, Samsung SDI did not seek to disseminate these facts as public information, instead seeking only to disclose them to a limited set of in-house counsel for Samsung SDI who have already agreed to be bound by the protective order as confidential attorneys eyes only information.

And that is how it's going to be used. And that is who it's going to be allowed to go to.

MR. KORNICZKY: Yes, Your Honor. It's Steve

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Korniczky. Under that definition, they don't necessarily have to be U.S. lawyers.

THE COURT: Well, but are they going to be bound by a court order? I'm assuming your clients are going to be bound by a court order; correct?

MR. KORNICZKY: Of course, Your Honor. Yes.

THE COURT: And that is the way it will be then. So to the extent that that is covered in there, I will allow it, but I don't expect it to be disseminated throughout a number of nonlegal personnel.

MR. KORNICZKY: And, Your Honor, this information would also relate to the common interest documents requested on page three of our letter brief; correct?

THE COURT: Wait a minute. Let me just see. Page three of your letter brief?

MR. KORNICZKY: I guess, Your Honor, what we're asking for, the documents that were withheld under the common interest that had gone back and forth between Honeywell and LPL.

MR. FROIO: And, Your Honor, what is being sought again is any and all communications by and between Honeywell's in-house counsel and LPL, negotiations over the license agreements, the joint defense agreements I referenced to earlier, all of which contemplate a joint

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defense agreement. And even, judge, the March 2003 license agreement itself states that it's subject to a joint defense and common interest privilege right in the language itself.

THE COURT: Let me ask you, who are you asking for to have access to these communications?

MR. KORNICZKY: Your Honor, outside counsel.

THE COURT: Outside counsel only.

MR. KORNICZKY: Correct.

MR. FROIO: Again, Your Honor, even at that, it is violating a privilege that Honeywell and LPL are entitled to by virtue of not just their actions but what they reduced to writing, and I believe it's inappropriate and the privilege ought to be sustained. It's for that very purpose, judge.

MR. KORNICZKY: Your Honor, I don't think that they can contract this is a privilege when it's not. It's not appropriate.

MR. FROIO: No, the privilege was created by virtue of the language in the agreement itself which the parties contemplated clearly that there was an identical legal interest as we clearly stated. And that is clearly stated in the agreements. I don't know what more, judge, Honeywell and LPL could possibly have done to better protect themselves in this regard. They contemplated this exact situation. And to allow that to be defeated would be just

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wrong.

MR. KORNICZKY: Your Honor, I think it's the underlying facts and scenario that dictate whether there is a privilege is there, and I think clearly there is not. We completely disagree with opposing counsel.

THE COURT: I know you do.

MR. ROSENTHAL: Your Honor, this is Larry Rosenthal again. Let me make two points. First of all, were there ever a privilege as to this agreement, it was waived by its production and the reliance and the expert reports. And I just hark back to the clawback letter motions that Your Honor decided some time ago where a document was claimed to have been inadvertently produced and upon the decision that it really wasn't privileged, it was released again. But it's clear to me that the facts, even the recitations in the agreement cannot be privileged. They can be highly confidential and use distribution can be restricted but I don't understand all the claim of privilege since you can't have privilege on something that you use in the litigation.

The second point is that I have in front of me now the three level protective order. The middle level, which is called attorneys eyes only, permits disclosure to up to four in-house counsel, legal or intellectual property staff members regularly employed by a party or the parties

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related corporate affiliate and responsible for assisting such party in connection with this action, hereinafter collectively in-house counsel -- collectively with in-house counsel. And those people have to agree to be bound by the terms before they're given any disclosure, so there a middle ground which was defined in the protective order as in-house counsel.

THE COURT: I have already given you my ruling on what that particularly is on the prior issue so let's pass by it right now.

MR. KORNICZKY: All right.

THE COURT: The issue that is sitting out there is Honeywell provided it to their experts to look at and was part of the analysis the experts used in preparing the reports and going through it.

MR. WOODS: Your Honor, this is Matt Woods. I'm just going to jump in because I can tell you that the agreement that opposing counsel have -- already have was provided to the experts, but none of any of the materials that counsel and SDI are now seeking, none of those materials were provided to any expert. The agreement, the underlying basic agreement that reflects the licensing was provided but none of the other materials. I apologize for jumping in, Your Honor, but I'm not sure Mr. Froio is familiar with that particular aspect.

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THE COURT: You know, that is an issue I'm going to put aside for now, about whether or not the other communications are or are not protected. And it's an issue that I'm concerned about because I'm not 100 percent certain you necessarily have a joint defense or common defense argument on this. I really do have some problems with it. And like I said, I was looking at the Corning case and also was looking over one of the cases that I had. In the case that I had in the Block Drug case, at least the two entities that were being sued were both being sued. So I'm not 100 percent certain I'm real comfortable to sit there and say I am persuaded that Honeywell and LPL have a joint defense or common interest privilege just because they say they have a joint defense and common interest privilege.

MR. FROIO: Well, I certainly understand what Your Honor is saying. And I would simply add again, Your Honor, not only what the parties said in the agreement but also how they have interacted since that agreement. And Loria Yeadon testified clearly as to what their participation has been. It's been a whole lot more, judge, than just sitting back and collecting whatever windfall royalty, portion of the royalty that has come in on this case. It's so much more than that.

THE COURT: Well, did you provide me with what Ms. Yeadon testified to and in response to discovery that

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was taken by the defendants or she provided was that included in any of your attachments to me?

MR. FROIO: I believe, judge, yes. The excerpts on the particular issues I believe were attached, yes.

THE COURT: Okay. And that would have been with your letter in response to the defendants' motion?

MR. FROIO: Yes, that's right. And, you know, Your Honor, we would even be willing to provide the common interest joint defense privileged document that is confidential by virtue of our agreement with LPL in camera that were necessary.

THE COURT: Yes, that's fine. That's fine. How much are we talking about as far as for my review? Because I did an in camera review on the Block Drug case, too.

MR. FROIO: Your Honor, if I were to submit, the two agreements I believe are approximately five pages each. We would also be willing to review Ms. Yeadon's deposition in those particular aspects to secure exactly their relationship and what LPL has in fact done subsequent to the execution of the agreement. We would be glad to submit those. It wouldn't be voluminous at all.

THE COURT: All right. Get it to me within the next two weeks, and then I will look at that issue from the standpoint of whether or not you get -- whether or not Samsung and the rest of the defendants get any

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further information --

MR. FROIO: Very well.

THE COURT: -- pursuant I believe to Docket Entry No. 925, a motion that Samsung and the defendants have filed.

Now, counsel, I have run into a problem. Excuse me for a moment.

(Off the record.)

THE COURT: Counsel, I have about 15 more minutes before I have to go into another teleconference. That teleconference should probably take me about a half hour, if it turns out that I haven't finished up with the discussion that is necessary, that may be necessary to address Honeywell's issue that it brought up regarding the discovery matter that it wanted addressed. So I don't want to shortchange Honeywell's issue, I just want to warn you. I've got about 15 minutes to address it and then I possibly have to take a break and then have counsel get back on the phone, but I'm telling you the next phone call is going to probably last roughly a half hour.

MR. SURDO: Your Honor, this is Peter Surdo on behalf of Honeywell. I'm perfectly willing to try to give you a short oral argument and figure we can get this knocked out quickly.

THE COURT: Okay.

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FULLY REDACTED